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CONSIDERATION AND ADOPTION OF AMENDMENTS TO MANDATORY INSTRUMENTS

Comments on documents MEPC/ES.2/2 and MEPC/ES.2/3

Submitted by CSC

SUMMARY

Executive summary: This document comments on documents MEPC/ES.2/2 and MEPC/ES.2/3 and describes recent international legal developments that Member States must take into account when considering the adoption of the IMO Net-Zero Framework (MEPC/ES.2/2) and the draft work plan to prepare for its entry into force (MEPC/ES.2/3).

*Strategic direction, 3
if applicable:*

Output: 3.2

Action to be taken: Paragraph 26

Related documents: MEPC ES.2/2, MEPC/ES.2/3; MEPC 83/17 and ISWG-GHG 17/2/17

1 This document is submitted in accordance with the provisions of paragraph 6.12.5 of the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5/Rev.6) and comments on the approved draft amendments to the draft Revised MARPOL Annex VI 2025 concerning the IMO Net-Zero Framework and associated draft work plan contained in documents MEPC/ES.2/2 and MEPC/ES.2/3 (Secretariat).

Background

2 On 23 July 2025, the International Court of Justice (ICJ or "the Court") unanimously adopted its advisory opinion, "Obligations of States in Respect of Climate Change" (ICJ AO),¹ clarifying States' obligations in respect of climate change across the entire corpus of international law.

¹ Available at: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>

3 On 3 July 2025, the Inter-American Court of Human Rights (IACtHR) issued its advisory opinion "The Climate Emergency and Human Rights" (AO-32/25),² clarifying the obligations of States within the Court's jurisdiction under human rights law in respect of climate change.

4 In this document, CSC identifies the key legal obligations relevant to the international shipping sector as explained by the ICJ and the IACtHR and put forward recommendations (paragraphs 22 to 25) that will help States to comply with these obligations in the context of the adoption of the draft amendments to MARPOL Annex VI concerning the IMO Net-Zero Framework presented in document MEPC/ES.2/2.

States' obligations under international law

5 The ICJ concluded that States have obligations with respect to climate change across the corpus of international law. It highlighted legally binding obligations arising from the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement (the climate change treaties), as well as from, inter alia, the United Nations Convention on the Law of the Sea (UNCLOS); the customary international law duties to prevent significant harm to the environment and to cooperate for the protection of the environment; international human rights law; and guiding principles.³

6 Notably, the ICJ considers MARPOL Annex VI to be one of the instruments that may contribute to protecting the climate system and noted the role of organizations such as IMO in regulating GHG emissions within specific fields (ICJ AO, paragraph 367).

7 The six most relevant findings of the ICJ and IACtHR in the context of document MEPC/ES.2/2 and the IMO Net-Zero Framework are considered in this document.

States have a customary international law duty to prevent significant harm to the environment

8 Customary obligations are the same for all States, regardless of whether a State is party to the climate change treaties (ICJ AO, paragraph 315).

9 The ICJ found that States have a duty of a customary nature to prevent significant harm to the environment (ICJ AO, paragraph 273). All States must, inter alia, regulate both public and private actors within their jurisdiction or control to avoid significant transboundary harm (ICJ AO, paragraph 282).

10 States must fulfil this duty by acting with due diligence, a standard of conduct which may evolve over time (ICJ AO, paragraph 280), and which is more demanding where there is generally recognized scientific evidence that significant harm will occur (ICJ AO, paragraph 283). The ICJ reaffirmed the Intergovernmental Panel on Climate Change (IPCC) reports as the best available science (ICJ AO, paragraph 278) and that it is necessary to consider the long-term impacts of current activities (ICJ AO, paragraph 275).

² Available at: <https://jurisprudencia.corteidh.or.cr/en/vid/1084981967>

³ The principles of sustainable development, CBDR-RC, equity, intergenerational equity and the precautionary principle are applicable guiding principles for the interpretation and application of the most directly relevant legal rules.

States have a customary international law duty to cooperate for the protection of the environment

11 States also have a duty of a customary nature to cooperate, in good faith, to protect the environment (ICJ AO, paragraphs 301 to 308). This duty requires "sustained and continuous forms of cooperation" (ICJ AO, paragraph 304). This duty applies to *all* States.

States must take measures to guarantee the effective enjoyment of human rights

12 Under international human rights law, States must take measures to protect the climate system and other parts of the environment to guarantee the effective enjoyment of human rights (ICJ AO, paragraph 403). The ICJ found that the human right to a clean, healthy and sustainable environment is essential to the enjoyment of other human rights (ICJ AO, paragraph 393).

13 The IACtHR similarly found that the right to a healthy climate must be protected as a precondition for the exercise of other human rights (AO-32/25, Section VIB.1.5), and States must mitigate GHG emissions to prevent human rights violations arising from alterations to the climate system (AO-32/25, Section VIB.1.6.i).

1.5°C is the agreed temperature threshold under the Paris Agreement

14 The ICJ considers 1.5°C to be Parties to the Paris Agreement's agreed primary temperature goal (ICJ AO, paragraph 224). This goal provides the "context" relevant for the interpretation of obligations found elsewhere in the Paris Agreement, including obligations of mitigation under Article 4 (ICJ AO, paragraph 231).

15 Irrespective of a State's status under the climate change treaties (party or non-party), the Court also considers that compliance in full and in good faith by a State with the climate change treaties, such as the Paris Agreement, suggests that this State substantially complies with the general customary duties to prevent significant environmental harm and to cooperate (ICJ AO, paragraph 314).

States have obligations related to financial assistance

16 Developed States Parties to the Paris Agreement have a legally binding obligation to provide financial resources to developing States under Article 9 (ICJ AO, paragraph 264) at a level which allows for the achievement of the temperature goal (ICJ AO, paragraph 265).

17 The customary international law obligation of cooperation entails, *inter alia*, "financial and economic aid to the least developed countries to contribute to a just transition" (AO-32/25, Section VIA.5).

18 The ICJ and the IACtHR both considered the principle of equity and common but differentiated responsibilities and respective capabilities to be guiding principles for the interpretation of the obligations of States under applicable international law (ICJ AO, paragraph 161; AO-32/25, Section VF.3.2).

Obligations of States under the law of the sea and related issues

19 The ICJ reiterated many of the findings of the International Tribunal on the Law of the Sea (ITLOS) in Advisory Opinion of 21 May 2024 (ICJ AO, paragraphs 339 to 354), including that States Parties to UNCLOS have obligations to "take all necessary measures to prevent and reduce pollution" (ICJ AO, paragraph 346).

20 The key legal obligations relevant to the international shipping sector with regard to the ITLOS Advisory Opinion were identified in document ISWG-GHG 17/2/17 (Pacific Environment and CSC).

Consequences for failing to meet international legal obligations

21 Breaches of States' obligations may give rise to the entire panoply of legal consequences provided for under the law of State responsibility. Consequences arising can require reparation including restitution, compensation and/or satisfaction (ICJ AO, paragraph 445). Obligations pertaining to the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, particularly the customary duty to prevent significant transboundary harm, are obligations *erga omnes*, or towards the international community as a whole (ICJ AO, paragraphs 440 to 443). This means that *any* State can invoke responsibility for a breach of these obligations.

Conclusions and recommendations

22 Increased climate ambition using the opportunities provided through IMO, including through adoption of the IMO Net-Zero Framework and the development of related guidelines, could help *all* States to comply with their international legal obligations.

23 The adoption of the IMO Net-Zero Framework, and its further development in accordance with the draft work plan (MEPC/ES.2/3), must be considered in light of the entire corpus of international law, including each of the obligations highlighted in this submission.

24 States' obligations to act with due diligence to avoid significant transboundary harm caused by international shipping's GHG emissions will only increase in stringency. States should consider the future stringency of their obligations when further developing the IMO Net-Zero Framework.

25 In order to help ensure these obligations are met, CSC recommends and urges Member States to:

- .1 do their utmost to cooperate in relation to the effective reduction of GHG emissions from international shipping: the adoption of the IMO Net-Zero Framework, and continued cooperation to strengthen its effectiveness are opportunities for *all* Member States to evidence their willingness to meet this obligation;
- .2 align international shipping's emissions reductions trajectory with the 1.5°C Paris Agreement temperature threshold. The adoption of the IMO Net-Zero Framework and the agreement of guidelines that strengthen its implementation are key opportunities to bring the sector closer to a 1.5°C pathway. However, Member States must take all additional opportunities to align international shipping with a 1.5°C pathway, including strengthening other IMO climate and energy efficiency rules, especially during phase 2 of the revision of the CII; and
- .3 to heed their international legal obligations related to financial assistance when developing and implementing the draft governing provision of the IMO Net-Zero Fund.

Action requested of the Committee

26 The Committee is invited to take into account the information and advice in this submission and in particular the conclusions and recommendations contained in paragraphs 22 to 25 when considering the adoption and implementation of the IMO Net-Zero Framework.
